

REMARKS

At the time the Office Action issued, claims 1 – 12 and 27 to 29 were pending. In the Office Action mailed November 28, the Examiner rejected all claims under 35 USC § 102(a) as anticipated by US Patent 7,181,821 to Anderson.

Claim rejections under 35 USC § 102

In support of the office action, the Examiner asserts that Anderson constitutes prior art under 35 USC § 102(a). Attorney for Applicant respectfully traverses the rejections.

The '821 Anderson reference is not prior art under 35 USC § 102(a) for several reasons.

First, 35 U.S.C. 102(a) reads:

A person shall be entitled to a patent unless -

<>

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent.

The '821 Anderson reference was published on March 10, 2005 (US Publication No. 2005/0050726), which is well after the filing date of the present application.

Second, '821 Anderson reference is not evidence that the invention was "known by others," as it has a common inventor with the present application and is commonly owned.

With respect to 35 U.S.C. 102(a), MPEP 706.02(a) II. C. provides:

C. 35 U.S.C. 102(a)

Even if the reference is prior art under 35 U.S.C. 102(e), the examiner should still consider 35 U.S.C. 102(a) for two reasons. First, if the reference is a U.S. patent or patent application publication of, or claims benefit of, an international application, the publication of the international application under PCT Article 21(2) may be the earliest prior art date under 35 U.S.C. 102(a) for the disclosure. Second, references that are only prior art under 35 U.S.C. 102(e), (f),

or (g) and applied in a rejection under 35 U.S.C. 103(a) are subject to being disqualified under 35 U.S.C. 103(c) if the reference and the application were commonly owned, or subject to an obligation of common assignment, at the time the invention was made. *For 35 U.S.C. 102(a) to apply, the reference must have a publication date earlier in time than the effective filing date of the application, and must not be applicant's own work.* (emphasis added).

Because the '821 reference does not qualify as a reference under 35 U.S.C. 102(a), reconsideration of the rejection is respectfully requested.

Concluding remarks

Attorney has addressed each rejection raised by the Examiner in the Office Action. Attorney therefore respectfully submits that the claims are in a state ready for allowance, and as such prompt issuance of a Notice of Allowance is respectfully requested.

In the event the Examiner has any questions or issues regarding the present application, the Examiner is invited to telephone the undersigned prior to the issuance of any written action.

Respectfully submitted,
Johannis J. Den Boer et al.

P.O. Box 2463
Houston, Texas 77252-2463

By /Marcella D. Watkins/
Attorney, Marcella D. Watkins
Registration No. 36,962
(713) 241-1041